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HAROLD B. WILLEY, C

No. 390

IN THE

Supreme Court of the United States

October Term, 1955

JOHN SYRES, LOUIS J. WARRICK AND LOCAL 254, OIL WORKERS INTERNATIONAL UNION, C. I. O.,
Petitioners

v.

OIL WORKERS INTERNATIONAL UNION, LOCAL #23, F. A. McDUFFIE, CHAIRMAN GULF MAIN PLANT GROUP AND GULF OIL CORPORATION, E. R. McADAMS, CHAIRMAN GULF WORKMEN'S COMMITTEE,
Respondents

PETITION FOR A WRIT OF CERTIORARI

to the United States Circuit Court of Appeals for the Fifth Circuit

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ERRATA

PETITION FOR A WRIT OF CERTIORARI

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for the Fifth Circuit

Petitioners, John Syres, Louis J. Warrick and Local 254, Oil Workers International Union, C. I. O., pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on June 21, 1955.

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Petitioners, John Syres, Louis J. Warrick and Local 254, Oil Workers International Union, C. I. O., pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above entitled case on May 25, 1948.

Citations to Opinions Below

The memorandum opinion of the United States District Court for the Southern District of Texas is unreported

and is printed in the accompanying record certified by the Clerk of the U. S. Court of Appeals, Fifth Circuit (R. p. 14). The opinion of the Circuit Court of Appeals, Fifth Circuit is in the certified copy of the record, p. 25, has not yet been officially reported.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on June 21, 1955 (R. p. 43). Rehearing was denied on August 5, 1955 (R. p. 48). The jurisdiction of this Court is invoked under 28 *U.S.C.*, Section 1254 (1).

Questions Presented

Whether the consummation of a racially discriminatory collective agreement, by the exclusive representative of employees is such a breach of the statutory duty imposed by the National Labor Relations Act upon such representative as might be redressed by Negro union and/or non union members so harmed, by suit for injunctive relief and for damages.

Whether the cause of action alleged in the instant cause is within the exclusive original jurisdiction of the National Labor Relations Board so as to cause petitioners to exhaust their administrative remedies before the Board before resort to the Federal District Court?

Statutes Involved

The statutory provisions involved are The National Labor Relations Act, 29 *U.S.C.* 151 et seq.; 28 *U.S.C.* 1331. They are printed in Appendix A, infra, pp. 11-12.

Statement

Petitioners, John Syres, Louis J. Warrick, and Local 254, Oil Workers International Union, on May 25, 1954, filed their complaint against respondents Local 23, F. A. McDuffie, and E. R. McAdams and Gulf Oil Corporation (R. p. 2), alleging breach of the statutory duty imposed by the National Labor Relations Act by the negotiation, through conspiracy, of a racially discriminatory collective agreement of April 17, 1954. Petitioners prayed for a temporary restraining order, a temporary injunction, and a permanent injunction and damages on final hearing. The jurisdiction of the District Court was invoked pursuant to 28 *U.S.C.* 1131, as a suit in equity under the Constitution and laws of the United States, viz., the Fifth Amendment of the said Constitution and 28 *U.S.C.* 151 (159) et seq. Petitioners alleged that the said contract was discriminatory in that it contained one line of seniority for Negro employees and one line of seniority for white employees, contrary to an agreement previously reached by the two locals representing Negro and White employees at the Gulf Oil Corporation's Port Arthur Refinery. Said agreement being reached after a plan to amalgamate the Workmen's Committee (the union organ which negotiates contracts with Gulf) with representation being selected by vote of a joint meeting of both the unions, instead of, as previously, each union having a guaranteed representation, with each union selecting its representatives in closed meetings. Previous to the amalgamated Workmen's Committee, the bi-racial committee had negotiated only "one line" seniority collective agreements with Gulf. The amalgamated committee which was composed solely of white employees, members of Local 23, negotiated the two line seniority contract.

Local 23 and Gulf filed motions to dismiss and on August 19, 1954, the District Court filed its final order of dismissal, having previously denied petitioners' application for temporary relief, on the ground that the cause of action does not arise under the Constitution, laws or treaties of the United States, within the purview and meaning of Title 28 *U.S.C.*, Section 1331 (R. p. 19).

The Circuit Court of Appeals, Fifth Circuit, affirmed the action of the District Court, by an opinion filed June 21, 1955. However, one of the three judges sitting dissented in a written opinion (R. p. 36).

Reasons for Granting the Writ

1. There is a conflict between the decision of the Court below in the instant case and the cases of *Steele v. Louisville & N. R. Co.*, 323 U.S. 192, and *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, et al.*, the majority decision in the instant case following *Williams v. Yellow Cab Co.*, 200 F. 2d 302.

This conflict with the two applicable aforementioned decisions of the Supreme Court is present because the decision in the instant case does not recognize the rule of law announced in the *Steele & Tunstall* Cases, Supra, that an exclusive bargaining agent under Federal Statute has a duty not to discriminate on account of race or color against any of the employees which it (the union) represents.

True, the instant Case involves the National Labor Relations Act and the *Steele & Tunstall* Cases, Supra, involved National Railway Labor Act, but it is believed that the rule announced by the Supreme Court in the latter Cases is equally applicable and of sufficient latitude to controlling here. This is so because of the substantial identity between

the sections of the National Railway Labor Act (45 *U.S.C.* 152 (Fourth) and the National Labor Relations Act (29 *U.S.C.* 159) which give rise to and express the powers of a representative selected by employees, and from which also by implication arise the duty incumbent upon the representative. The Supreme Court in the *Steele* Case, Supra, specifically recognized this substantial identity in these words:

> ". . . The use of the word 'representative', Sec. 2 fourth of the National Railway Labor Act (which is comparable to Section 159 of the National Labor Relations Act), as amended as thus defined . . . plainly implies that the representative is to act on behalf of all the employees which by virtue of the statute it undertakes to represent."

Following the *Williams* Case, however, the decision of the lower court has engrafted an exception upon the aforementioned rule, in conflict with the said rule as well as with the reasoning and general principles announced in the *Steele & Tunstall* Cases, Supra. This conflict seems to proceed from the premise, laid by the court in the *Williams* Case and followed by the court below, that the distinguishing factor between these two cases (i.e., the instant case and the *Williams* Case, Supra) and the *Steele & Tunstall* Cases is the fact that in the latter the complainants were Negro non-union members, whereas in the former the complainants are Negro union members. To seize upon this distinction as the basis for evolving a rule of law which would deny federal equitable relief to Negro union complainants who had been discriminated against, is in clear conflict with the rule of law as announced in the *Steele* Case, Supra, and contrary to much of the language therein. For the duty therein set forth, though implied, exists in favor of all employees

whom the union represents. The *Steele* Case plainly indicates that the duty is owed to *all* employees whom the union represents.

The distinction having been seized upon by the lower Court in this case, the Honorable Court then proceeded to establish the proposition, in conflict with the ruling in the *Steele* Case, that the negotiation of the discriminatory contract herein involved was not an exercise of authority contrary to the powers granted by the National Labor Relations Act, but was only the breach of a private agreement between the Negro and the white Local which was not cognizable in the Federal District Courts. But it would appear from the following language of the Supreme Court in the *Steele* Case that when the exclusive bargaining representative negotiates a contract it is acting pursuant to statutory granted powers which action may be the subject of judicial review on the complaint of either minority non-union members or minority union members. Quoting again from the *Steele* Case, there it is said:

> "... the statutory power to represent a craft and to make contracts as to wages, hours and working conditions does not include the authority to make among members of the craft discriminations not based on relevant differences. Here the discriminations based on race alone are obviously irrelevant and invidious. ... it (the act) does require the union to represent non-union or ***minority union*** members of the craft without hostile discrimination, fairly, impartially and in good faith."

The Court below held, in conflict with the above language, that the facts here involved do "not require an interpretation of the National Labor Relations Act or any other federal law," following in the wake of the language in the

Williams Case, which is also in conflict with the language in the *Steele* Case, which said, "The right of a labor union to engage in collective bargaining on behalf of its members is a right which was not conferred by the National Labor Relations Act. . . ."

The instant case is therefore clearly in conflict with the Supreme Court's prior determination that the National Labor Relations Act does grant the power to act as exclusive bargaining agent and its contrary conclusion is therefore clearly erroneous.

2. The question presented by the instant case is important because it involves the administration of the National Labor Relations Act, and a construction by the Supreme Court of the statutes relative to question or questions herein involved will be of great importance and significance to a major portion of industries engaged in interstate commerce in this Nation.

Though it is apparent that the decisions in the *Steele* and *Tunstall* Cases are applicable to the instant case it is nontheless important to the public welfare that the Supreme Court put at an end the question of whether minority union members may avail themselves of federal equity powers to redress racial discrimination practices by the exclusive bargaining agent. For admittedly, though the principles of law announced in the *Steele* Case are broad enough to cover the facts in this case, the petitioners in that case were non-union members. This difference has been thought significant by some courts (i.e. the courts in the instant case and in the *Williams* Case), but not by the dissenting judge in this case (R. p. 12), and it can only be settled by a decision from this Court.

The question to be decided is further important for the primary question to be decided is a procedural matter as to the jurisdiction of the Federal District Courts under 28 *U.S.C.* 1331.

It is likewise believed that the question presented is important for the reason that this will be the first decision of this character by the Supreme Court which involves the construction of the National Labor Relations Act, the *Steele* and *Tunstall* Cases having involved the construction of the National Railway Labor Act; and since the question is designed to specifically decide a question on facts somewhat different from the facts in the *Steele* Case, a decision by the Supreme Court in this case will serve to stabilize further interpretation and administration of both acts. Such a decision would have far reaching results in the clarification of the remaining, unsettled portion of the law relative to minority union members.

3. The second question set out is important because a decision by this court therein will affect a substantial number of employees employed in industries engaged in interstate commerce, in that it will determine whether those complaining of discrimination by a bargaining agent must first resort to the Board for relief.

It will be important to determine whether the pronouncement of the Board in certain cases [*Carter Manufacturing Co.*, 59 N.L.R.B. 804, 806 (1944); *General Motors Corporation*, 62 N.L.R.B. 427, 431 (1945); *Hughes Tool Company* Case,104 N.L.R.B. 318 (1953)], in which cases the Board indicated that it would revoke certification of any union if after an investigation the agent should be found guilty of discrimination against any of the employer whom it represents on account of race or color, has

the effect of depriving the federal district courts of jurisdiction.

Hence it would be important to decide whether minority non-union members must first ask for and be denied the remedy of revocation of certification.

It is further important to determine whether 29 *U.S.C.* 159 (b) of the National Labor Relations Act confers this Jurisdiction on the N.L.R.B.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ROBERSON L. KING,
Counsel for Petitioners

Date: Aug 25, 1958

APPENDIX A

28 U.S.C. 1254. COURTS OF APPEALS—CERTIORARI—APPEAL—CERTIFIED QUESTIONS.—Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. 1331. FEDERAL QUESTION—AMOUNT IN CONTROVERSY.—The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States.

29 U.S.C.
§ 159(b).

The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof:

29 U.S.C.
§ 159. REPRESENTATIVES AND ELECTIONS—EXCLUSIVE REPRESENTATIVES; EMPLOYEES' ADJUSTMENT OF GRIEVANCES DIRECTLY WITH EMPLOYER.

(a) Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such

unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

CONSTITUTION OF UNITED STATES OF AMERICA AMENDMENT V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty, or property, without due process of law; nor shall be taken for public use, without just compensation.

Certificate of Service

Copies of this Brief have been previously delivered to Counsel for Respondents.

ROBERSON L. KING

APPENDIX B

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 15286

JOHN SYRES AND LOUIS J. WARRICK, *Appellants*

VERSUS

OIL WORKERS INTERNATIONAL UNION, LOCAL #23, F. A. McDUFFIE, CHAIRMAN GULF MAIN PLANT GROUP AND GULF OIL CORPORATION, E. R. McADAMS, CHAIRMAN OF GULF WORKMEN'S COMMITTEE, *Appellees*

Appeal from the United States District Court for the Eastern District of Texas

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(June 21, 1955)

Before RIVES, Circuit Judge, and DAWKINS and DeVANE, District Judges.

DAWKINS, District Judge: Syres and Warrick, as representatives of all individuals similarly situated, and Local No. 254 of the Oil Workers International Union brought

this action in the district court for an injunction to prevent the enforcement of a bargaining agreement with the employer, for declaratory judgment that the agreement is void and for damages. The defendants were Local No. 23 of the Oil Workers Union, Gulf Oil Corporation (called Gulf) and certain individuals as class representatives. The trial court dismissed for lack of jurisdiction.

Appellants alleged that Local No. 254 is composed of Negro employees of Gulf and Local No. 23 of white employees. Pursuant to an agreement between the two locals, and after an election, they were both certified as the joint bargaining representatives of Gulf's employees and entered into contracts with Gulf. Subsequently the two locals decided to "amalgamate" and be represented by one bargaining committee, as to which complainants allege it was agreed there should be only "one line" for seniority. The committee was chosen by majority vote, and was composed entirely of white members of Local No. 23. Negotiations with Gulf resulted in a contract providing for two lines of seniority, and the effect according to complainants, was to freeze the Negro employees in their jobs and prevent their bidding on higher classifications. They further alleged that this discrimination was based solely on race, and invoked jurisdiction under 28 U.S.C. 1331, contending that it was a suit in equity involving an interpretation of the Constitution and laws of the United States, namely, the Fifth Amendment and the National Labor Relations Act. They of course alleged the jurisdictional amount of more than $3,000.

The union defendants moved to dismiss for lack of jurisdiction and for failure to state a claim. Gulf moved to dismiss for the reason that the amount did not exceed $3,000, the controversy did not arise under the Constitution or laws

of the United States, the matter was one exclusively for the National Labor Relations Board, and the complainants had not exhausted the remedies provided by the constitution and by-laws of the union. Judge Sheehy dismissed for the reason that the "cause of action, if any, * * * does not arise under the Constitution, laws or treaties of the United States, within the purview or meaning of" 28 U.S.C. 1331.

Appellants cite *Steele v. Louisville & N. R. Co.*, 323 U.S. 192; *Tunstall v. Brotherhood*, 323 U.S. 210, and *Brotherhood v. Howard*, 343 U.S. 768, which arose under the National Railway Labor Act. There it was held that said Act, having created a statutory bargaining agent for all railroad workers, imposed an implied duty to represent all workers fairly and without discriminations based upon race. Appellants cite *Ford Motor Co. v. Huffman*, 345 U.S. 330, in support of their contention that the Taft-Hartley Act also makes the chosen union the exclusive statutory bargaining agent. Based upon these authorities, they argue that the union (amalgamated) must represent all members of the craft without discrimination as to color, and having failed to do so, the result is the same as was held under the Railway Labor Act. They further argue that the right claimed is a private one over which the N.L.R.B. has no jurisdiction, since that agency deals only with public rights, for which reason they contend they have no administrative remedy.

Gulf argues that even if the claimed right does arise under the Taft-Hartley Act, it imposes no duty upon the employer to bargain for one group of employees in an agreement solely between two groups of the union. Further, it contends that the Fifth and Fourteenth Amendments apply only to official acts of the State and Federal Gov-

ernments and the Taft-Hartley Act does not accord the right here claimed. It relies strongly upon *Williams v. Yellow Cab Co.*, 200 F. 2d 302, which distinguished the "railroad brotherhood" cases from those arising under the Taft-Hartley Act and refused to apply them. It further argues that at best the facts alleged amount to nothing more than an unfair labor practice of which the N.L.R.B. has exclusive jurisdiction, citing *Carter Manufacturing Co.*, 59 N.L.R.B. 804; *General Motors Corp.*, 62 N.L.R.B. 427, and *Hughes Tool Co.*, 104 N.L.R.B. 318. It finally contends that there is no allegation that appellants have exhausted remedies under the union's constitution and by-laws, or that none exists.

The union appellees (No. 23) refrain from contending that the Taft-Hartley Act does not confer rights of this character under any circumstances, but content themselves with saying, in this particular case, the issue is between one element of the amalgamated union against the joint bargaining agent duly certified and that the dispute concerns merely the private matter of seniority, not covered by the Taft-Hartley Act, and hence does not arise under Federal laws.

The International Union seeks to appear as amicus curiae, and its brief sides with the appellants. It joins appellants in arguing that a bargaining agent derives its authority from the statute, rather than from the consent of its members and has the same legal duty to refrain from racial discrimination as was held under the Railway Labor Act. In any event, it contends that whether or not the appellants were all members of the union was a fact issue which could not be decided without a hearing on the merits.

In *Williams v. Yellow Cab Co., supra,* the Third Circuit Court of Appeals, one of whose members was Judge Hastie, had occasion to consider substantially the same questions as presented in the present case, and unanimously sustained a ruling that there was no jurisdiction. The Supreme Court denied certiorari. Judge Maris reviewed and distinguished the cases relied upon here. We feel little need be added to what was said:

> "The appellant relies primarily upon the cases of Steele v. Louisville & N. R. Co., 1944, 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173, and Tunstall v. Brotherhood, 1944, 323 U.S. 210, 65 S. Ct. 235, 89 L. Ed. 187, to sustain his proposition. In these cases the Supreme Court held that the Brotherhood of Locomotive Firemen and Enginemen, when exercising the power granted by the Railway Labor Act to act as the statutory representative of the craft of firemen, composed of white members of the Brotherhood and Negro nonmembers, was under a duty imposed by the act to protect equally the interests of all the members of the craft in behalf of whom it acted. The court said that the power conferred on the Brotherhood by the act must be exercised fairly and without discrimination between its own member employees and those employees who were not its members. This rule does not preclude the statutory representative of a craft from making contracts the terms of which vary in their application to individual employees by reason of differences in seniority, competence, type of work done, or other relevant factors, but the court pointed out that discrimination based on race alone is irrelevant, invidious and unauthorized.
>
> * * *
>
> "It does not follow, however, that the National Labor Relations Act imposed such a duty upon the

Union in this case. For even if we assume that the Cab Company was engaged in interstate commerce, the act contains no general prohibition of discriminatory practices by unions engaged in collective bargaining with employers. * * *

"In considering this question *we must bear in mind that the plaintiffs were all members of the Union.* This is the distinguishing factor which makes the rule of the Steele case inapplicable to the facts of this case.

* * *

"The right of a labor union to engage in collective bargaining on behalf of its members is a right which was not conferred by the National Labor Relations Act but was recognized long prior thereto. In exercising its powers to bargain collectively for its members as in all its other activities on their behalf a labor union acts, through its authorized officers, as agent of the entire membership within the authority conferred by its constitution and by-laws. In exercising these bargaining powers the labor union has the corresponding duty of an agent to represent all its members fairly in good faith and without discrimination. This duty, however, being one imposed by the law of the state in which the Union operates, cannot be made the basis for invoking federal jurisdiction under Section 1331, even though it might well form the basis for action in the state courts. As we have said, the plaintiffs here were all members of the Union. we are compelled to conclude that the authority of the Union to act for them in collective bargaining was derived from their consent as evidenced by their membership and not from Section 9(a) of the National Labor Relations Act.

* * *

"When we turn to the National Labor Relations Act we find no such detailed regulation of collective

bargaining. For the act was directed primarily to the prevention of unfair labor practices in order to open the way for free collective bargaining rather than to the regulation of the course of such bargaining and the settlement of disputes." (Emphasis supplied.)

In the *Steele* case, *supra*, the Supreme Court emphasized that the Railway Labor Act required the union to represent all employees in the craft, whether members or not, which gave non-members (in that instance Negroes) the right to invoke its provisions.[1]

In the *Howard* case, *supra*, petitioner was a member of a colored union but the contract was made between the railroad company and the white union in which the colored union and its members had no part. It was found that the provisions of the contract amounted to a patent effort to eliminate the colored porters who over the years had also performed the services of brakemen along with white employees of the craft who were represented by the Brotherhood. Here again, and for the same reason, the bargaining agent was bound to *represent all who worked in the craft*, and could not discriminate, thus giving the jurisdicton to enforce the Railway Labor Act, including the issuance of an injunction under 29 U.S.C.A. 101, et seq. It was specifically held that what the white union had done was a "breach of statutory duty."

1 "But we think that Congress, in enacting the Railway Labor Act and authorizing a labor union, chosen by a majority of a craft, to represent the craft, did not intend to confer plenary power upon the union to sacrifice, for the benefit of its members, rights of the minority of the craft, without imposing on it any duty to protect the minority. **Since petitioner and the other Negro members of the craft are not members of the Brotherhood or eligible for membership, the authority to act for them is derived not from their action or consent but wholly from the command of the Act.**" 323 U.S. 199 (Emphasis supplied.)

In the present case all employees were members of the "amalgamated" union by their own voluntary consent, and their complaint is not that they were not represented, but that the committee selected for the purpose of making the contract had violated the provisions of an agreement that there should be but one line for promotion, and instead contracted with Gulf for two lines, composed of the white and colored members respectively. In this situation, the alleged wrong-doing arose from a breach of that contract, which, if proven, would require a reformation or cancellation to comply with the understanding alleged through establishment of a single line of seniority for promotion. It does not require an interpretation of the National Labor Relations Act or any other federal law, and hence all parties on either side must be citizens of different states. There is no allegation of such diverse citizenship. In so far as this record shows, they are all citizens of Texas and their cause of action, if any, can be brought in the state court.

It may be noted, however, that seniority depends upon many things other than membership in a union or the race of the employee, in which the employer necessarily has a voice, and in a trial in the proper court all factors pertinent thereto can be fully developed and considered.

Ford Motor Company v. Hoffman, supra, involved the construction of federal statutes other than the National Labor Relations Act, including the Selective Service Act of 1940, and amendments thereto. That case disposed of two suits brought in the trial court by employees against Ford and the Union as class suits, in which it was alleged that the complainants' position and that of each member of their class were lowered on the seniority roster because of certain provision in collective bargaining agreements between Ford and the Union and that those provisions vio-

lated their rights and those of each member of their class under the Selective Training and Service Act of 1940. They contended also that the union's acceptance of these provisions exceeded its authority under the National Labor Relations Act. They asked that the provisions be declared invalid insofar as they prejudiced the seniority rights of members of their class and that appropriate injunctive relief be granted, just as here, against the defendants. Among other things the Supreme Court, with respect to seniority, said:

> "Any authority to negotiate derives its principal strength from a delegation to the negotiators of a discretion to make such concessions and accept such advantages as, in the light of all relevant considerations, they believe will best serve the interests of the parties represented. A major responsibility of negotiators is to weigh the relative advantages and disadvantages of differing proposals. A bargaining representative, under the National Labor Relations Act, as amended, often is a labor organization but it is not essential that it be such. The employees represented often are members of the labor organization which represents them at the bargaining table, but it is not essential that they be such. The bargaining representative, whoever it may be, is responsible to, and owes complete loyalty to, the interests of all whom it represents. *In the instant controversy, International represented, with certain exceptions not material here, all employees at the Louisville works, including both the veterans with, and those without, prior employment by Ford, as well as the employees having no military service. Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is*

hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty, of purpose in the exercise of its discretion.

"Compromises on a temporary basis, with a view to long-range advantages, are natural incidents of negotiation. Differences in wages, hours and conditions of employment reflect countless variables. *Seniority rules governing promotions, transfers, layoffs and similar matters may, in the first instance, revolve around length of competent service. Variations acceptable in the discretion of bargaining representatives, however, may well include differences based upon such matters as the unit within which seniority is to be computed, the privileges to which it shall relate, the nature of the work, the time at which it is done, the fitness, ability or age of the employees, their family responsibilities, injuries received in course of service, and time or labor devoted to related public service, whether civil or military, voluntary or involuntary.* See, e.g., *Hartley v. Brotherhood of Clerks*, 283 Mich. 201, 277 N.W. 885; and see also, Williamson & Harris, Trends in Collective Bargaining (1945), 100-103." 345 U.S. 337. (Emphasis supplied.)

In that case no question of jurisdiction arose for the simple reason it required an interpretation of the Selective Service Act and its amendments. The District Court had found the bargaining agreement fair and denied the injunction. This was reversed by the Court of Appeals for the Sixth Circuit, and in turn, the latter decision was reversed by the Supreme Court, and the judgment of the District Court affirmed.

The present case does not require construction of a federal statute, but involves simply an issue of whether the defendants have violated a private contract voluntarily

made between the two groups of employees. Even if the provision appellants deem objectionable be eliminated, there would still remain the issues of seniority and qualifications for promotion, the latter one as to which the employer must be heard.

AFFIRMED.

RIVES, Circuit Judge: I dissent.

RIVES, Circuit Judge, dissenting:

On its face, the provision in the collective bargaining contract of April 17, 1954 to which appellants object [1] does not appear to be discriminatory. There can be no valid objection to terms of a contract governing promotions in employment which vary in their application to individual employees by reason of competence, type of work, or other relevant factors,[2] among which ordinarily would be included the unit within which seniority is computed.[3]

A contract innocent on its face may, however, be entered into with an ulterior motive and for a wrongful purpose. The complaint alleges that presently only negro employees comprise the Labor Division and only persons of the white race compose the Operating-Mechanical Division of the employer, and further that "many of the jobs in the Operating-Mechanical Division are more remunerative than

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1 "Sec. 1(D) Promotional charts shall be established for all lines of promotion in each department. Promotions, demotions, lay-offs, bidding, and other applications of seniority shall be made separately by division—i.e., Labor Division and Operating-Mechanical Division— * * * "

2 Steele v. L. & N. R. Co., 323 U.S. 192; Williams v. Yellow Cab Co., 3rd Cir., 200 F. 2d 302.

3 See Ford Motor Co. v. Huffman, 345 U.S. 337.

the jobs in the Labor Division and are for other reasons desirable." The complaint also alleges that the quoted provision of this contract (footnote 1, *supra)* was the result of a conspiracy on the part of the defendants "to deprive plaintiffs of valuable employment rights aforesaid solely on account of race and/or color."

Even those averments, however, do not make a case within the jurisdiction of the federal courts unless the law either enters into the making of the contract or provides sanctions for its observance, for there is at this time no federal law preventing parties by private agreement from discriminating solely on account of race or color. If, on the other hand, the contract is the product not merely of private agreement, but also of the provisions of the law,[4] or if the law is called on for the enforcement of the contract,[5] or, it seems to me to follow as a necessary consequence, *if the law provides automatic sanctions for the observance of the contract, then there can be no discrimination based on race or color.* All men are entitled to the equal protection of the law and, except as punishment for wrongdoing, the law will not lend its aid to keep any man down, or to prevent his advancement or promotion.

It seems clear to me that the law both entered into the making of this collective bargaining *contract and also provides automatic sanctions for its observance.* The bargaining unit was determined by the National Labor Relations Board pursuant to the provisions of the law.[6] Thereafter, acting further under the provisions of the National Labor Relations Act[7] the members of the unit

[4] See Steele v. L. & N. R. Co., supra; Tunstall v. Brotherhood, 323 U.S. 310; Brotherhood v. Howard, 343 U.S. 768.

[5] Shelley v. Kraemer, 334 U.S. 1, 8, et seq.

[6] 29 U.S.C.A. 159(b)

[7] 29 U.S.C.A. 159(e)

elected a bargaining representative and the Board certified both the negro Local No. 254 and the white Local No. 23 to act jointly as the exclusive bargaining agent. The majority of the employees belonged to the white Local No. 23, and prior to January 5, 1954 contracts were negotiated through a workmen's committee, composed of eight persons from the white Local No. 23 and four persons from the negro Local No. 254. A plan was then agreed upon by which workmen's committee nominations would be made at a joint meeting of both locals, but with the assurance to the negro Local No. 254 and its members that in negotiating contracts the workmen's committee would in no manner discriminate nor permit any contract to be negotiated which would be discriminatory because of race or color. Up to that time, collective bargaining agreements with the employer had contained "one line" nondiscriminatory seniority provisions. There is no explanation of just how those provisions had operated to the result that only negro employees comprised the Labor Division and only persons of the white race composed the Operating-Mechanical Division of the employer. In any event, the workmen's committee, which negotiated the contract of April 17, 1954, was composed of persons all of the white race who held membership in the white Local No. 23. The determination of the bargaining unit, the election by the employees in the bargaining unit of their representative for purposes of collective bargaining, and the certification of that representative had all been pursuant to the provisions of the National Labor Relations Act. *One efficient operating cause for the alleged discriminatory provision was the determination of a bargaining unit composed mostly of white persons* and the certification of a bargaining representative also composed in the majority of persons of the white race. Those were the acts which made the alleged discriminatory

provision possible and those acts were accomplished pursuant to the National Labor Relations Act. 29 U.S.C.A. 158 (a) (5) and 158(b) (3) make it unlawful for either the employer or the union to refuse to bargain with and through the representative designated or selected for the purpose. The law, therefore, very clearly and definitely entered into the making of this collective bargaining contract.

It is no answer to say that the plaintiffs are entitled to no relief because they were all members of one of the two locals composing the bargaining agent. I am not sure that that would be the result of the holding in *Williams v. Yellow Cab Co.*, 3rd Cir., 200 F. 2d 302, but, if it would, I must, with much deference, respectfully disagree with such holding. In the absence of statute, membership in a local union would not of itself carry any requirement similar to the provision of the statute, 29 U.S.C.A. 159 (a), that.

> "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the *exclusive* representatives of *all* the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment" (Emphasis supplied).

Without the statutory provision, a person might be a member of a local labor union and still retain the right to speak for himself or to have others speak for him as to some of the conditions of his employment. The statute takes away any such right and constitutes the representative designated or selected for purposes of collective bargaining the exclusive representative of all the employees. A member of a local union who finds himself in the minority in the selection of such a representative, or in the selection of the workmen's

committee to act for such representative, is almost, if not quite, as powerless to protect himself as is a nonunion member. I can see no valid distinction in the protection afforded by the law between persons who are not members of any union and persons who are minority members of the locals composing the bargaining representative. Certainly, by his consent to union representation, a laborer does not forfeit his right to redress unconstitutionally discriminatory practices which he would have retained had he refrained from union membership.

The law not only played an important part in the making of the collective bargaining contract, but it provides automatic sanctions for its enforcement. 29 U.S.C.A. 158(d) reads in part:

> "That where there is in effect a collective bargaining contract covering employees in an industry affecting commerce * * * no party to such contract shall terminate or modify such contract, unless the parties desiring such termination or modification * * * (4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of 60 days * * * or until the expiration date of such contract, whichever occurs later * * *
>
> "Any employee who engages in a strike within the 60-day period specified in this sub-section shall lose his status as an employee of the employer * * *."

In *Wilson & Co. v. N.L.R.B.*, 8th Cir., 210 F. 2d 325, it was held that striking employees lose their status as employees if they strike before the expiration date of the contract. If the averments of the complaint are true, the negro Local No. 254 and its members are constrained to accept racial discrimination because of the duties imposed under the National Labor Relations Act.

There are no adequate remedies available to appellants under the National Labor Relations Act or through the Board.[8] The National Labor Relations Act gives the Board power to remedy specific "unfair labor practices" as defined in said Act. Nowhere is the Board given power to prevent discrimination because of race or color, except by very limited procedure which would afford no adequate remedy in this case.

It is suggested that appellants could petition the Board for (1) a separate bargaining unit of their own, or (2) decertification of their bargaining representative. There is, however, no administrative means by which the negro members can secure adequate separate representation for the purposes of collective bargaining.[9] Decertification by the Board would afford no remedy at all. The alleged discrimintory contract would remain in full force after any such decertification. Further, there is no assurance that the majority of the employees in the unit, who are white persons, would select another representative who would bargain without discrimination.

It seems to me that 29 U.S.C.A. 159(a) impliedly, but clearly, imposes a duty on a certified bargaining agent not to abuse the bargaining prerogative by resorting to unconstitutionally discriminatory practices. Further, I think that the federal courts have jurisdiction to protect negroes from loss of promotional rights solely because of their race or color, under compulsion of a collective bargaining contract between their employer and their exclu-

[8] See Steele v. L. & N. R. Co., supra; Brotherhood v. Howard, supra.

[9] See Steele v. L. & N. R. Co., supra. See also, Crescent Bed Co., 29 NLRB 34; Columbian Iron Works, 52 NLRB 370; Larus & Bros. Co., 54 NLRB 1345; American Tobacco Co., 9 NLRB 579; and Georgia Power Co., 32 NLRB 692.

sive bargaining representative, which was executed pursuant to the duty to bargain under the National Labor Relations Act. I must, therefore, respectfully dissent.

A True Copy:
Teste:

Clerk of the United States Court of Appeals for the Fifth Circuit.

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No. 390

IN THE

Supreme Court of the United States

October Term, 1955

JOHN SYRES, LOUIS J. WARRICK AND LOCAL 254, OIL WORKERS INTERNATIONAL UNION, C. I. O.,
Petitioners

v.

OIL WORKERS INTERNATIONAL UNION, LOCAL #23, F. A. McDUFFIE, CHAIRMAN, GULF MAIN PLANT GROUP AND GULF OIL CORPORATION, E. R. McADAMS, CHAIRMAN, GULF WORKMEN'S COMMITTEE,
Respondents

BRIEF ON BEHALF OF GULF OIL CORPORATION

In Opposition To Petition For A Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit

The Respondent, Gulf Oil Corporation (hereinafter called Gulf), files this reply to the Petition for Writ of Certiorari.

Decisions Below

The trial court filed no opinion but dismissed the cause for the reason that the "cause of action, if any, . . . does

not arise under the Constitution, laws or treaties of the United States, within the purview and meaning of Title 28, U.S.C.A., Section 1331. (R. 19). The Court of Appeals, Fifth Circuit, affirmed in an opinion reported in 223 F. 2d 739, (CA-5, 1955), Judge Rives dissenting.

Jurisdiction

The only issues in the case go to the jurisdiction of the Court, both courts below having held that no jurisdiction exists in a Federal District Court under §1331, as alleged by petitioners.

Counter Statement of Questions Presented

1. Whether the alleged breach of a private agreement (to which agreement Gulf was not a party) between two unions becomes a federal question merely because the unions were certified under the National Labor Relations Act.[1]

2. Whether petitioners who are members of a certified bargaining union can seek equitable relief for an alleged wrong in a Federal District Court of limited jurisdiction without exhausting their administrative remedies under the National Labor Relations Act.

Counter Statement of the Case

The gravamen of the complaint is the alleged breach of an "amalgamation" agreement between two unions, Gulf not being a party to the alleged agreement. (R. 7, 8). The two local unions were separately organized but jointly certified as the collective bargaining agent of the employees. The two locals were amalgamated by voluntary action on

[1] 29 U.S.C. 151.

the part of the members of each union. The alleged breach of this "amalgamation" agreement forms the basis of the suit. (R. 12).

Diversity of citizenship is not alleged, nor are allegations made that the membership of Locals 23 and 254 is limited to members of the white and Negro races respectively. Pursuit of administrative remedies before the National Labor Board is not alleged, exhaustion of remedies within the union organization is not alleged, nor does petitioner allege that the amount in controversy *between individuals* is in excess of the jurisdictional amount of $3,000.00.

Argument

I.

The Breach of A Private Agreement Does Not Require Construction of A Federal Statute.

Both courts below correctly hold that jurisdiction was not affirmatively shown. An *affirmative* showing of jurisdiction is mandatory under long established rules of this Court.[2]

Petitioners, in attempting to justify issuance of certiorari, fail to meet this issue squarely but attempt to show a conflict between the decisions of this Court in *Steele*[3] and *Tunstall*[4] and the opinion rendered by the majority in the Court of Appeals. Clearly, no conflict exists. The Fifth Circuit recognizes, in appropriate cases, the doctrine of *Steele* and *Tunstall*.[5] Here, it follows the *Williams*[6] case and care-

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[2] Norton v. Larney, 266 U.S. 511, 515 (1925).

[3] Steele v. Louisville & N.R. Co., 323 U.S. 192 (1944).

[4] Tunstall v. Brotherhood, etc., 323 U.S. 210 (1944).

[5] Pellicer v. Brotherhood of Railway and Steamship Clerks, 118 F. Supp. 254 (1953), Aff. 217 F. 2d 205 (CA-5, 1954), cert. den. 349 U.S. 912 (1955).

[6] Williams v. Yellow Cab Co., 200 F. 2d 302 (CA-3, 1952); cert. den. sub. nom. Dargan v. Yellow Cab Co., 346 U.S. 840 (1953).

fully distinguishes *Steele* and *Tunstall*. This court denied a writ in the *Williams* case where the identical argument was invoked by petitioner as is urged herein.

In the instant case the Court of Appeals went to the heart of the matter and found that the alleged wrongdoing arose from a breach of a private agreement between two unions on a simple seniority problem and correctly decided the jurisdictional issue. Holding that petitioners' remedies are clear and adequate in the state courts of general jurisdiction in Texas, the court below wisely refused to assume the burden of policing collective bargaining agreements.

To permit individual members or dissatisfied minorities to go into the Federal Courts on every seniority clause in contracts would place an intolerable burden upon these courts. Each Federal Judge would then be required to review and pass upon seniority clauses which contain "variations acceptable in the discretion of the bargaining representatives . . ."[7]

The Court of Appeals correctly recognized the absence of a conflict between the instant case and the *Steele* and *Tunstall* cases because there the petitioners could not become members of the bargaining union and were denied *any* administrative remedies.[8] Here, *petitioners are members of the bargaining union* and the National Labor Relations Board stands ready to protect their legal and constitutional rights.

In the complaint, petitioners alleged that Local No. 254 "after receiving the assurance of the membership of Local 23 that they would in no manner be discriminated against in the negotiation of the Collective Agreement . . . (with Gulf)

[7] Ford Motor Co. v. Huffman, 345 U.S. 330 (1952).
[8] Tunstall, supra.

. . . because of race or color . . . allowed the Workmen's Committee to be formed by the joint action of Local 23 and Local 254 . . ." [9] Upon this allegation, the majority in the Court of Appeals properly held:

> "In the present case all employees were members of the 'amalgamated' union by their own voluntary consent, and their complaint is not that they were not represented, but that the committee selected for the purpose of making the contract had violated the provisions of an agreement, . . . In this situation, the alleged wrong-doing arose from a breach of that contract, which, if proven, would require a reformation or cancellation to comply with the understanding alleged through establishment of a single line of seniority for promotion. It does not require an interpretation of the National Labor Relations Act or any other federal law, and hence all parties on either side must be citizens of different states."

There is a close similarity between the case at bar and *Hayes v. Union P. R. Co.*,[10] wherein jurisdiction was denied in a case arising under the Railway Labor Act.[11] There the trial court said:

> " . . . Any right of action, if one exists, is based on the alleged breach of the agreement and does not arise under the Railway Labor Act, but only from the consequent contractual relations of the parties . . ." [12]

The Court of Appeals, Ninth Circuit, adopted this opinion with the significant comment "that the Federal Courts

[9] Complaint, Par. VII, R. 7-8.

[10] Hayes v. Union P.R. Co., 88 F. Supp. 108 (D.C.N.D. Cal. 1950); 184 F. 2d 337 (CA-9, 1950); cert. den. 340 U.S. 942 (1950).

[11] 45 U.S.C. 151, et seq.

[12] 88 F. Supp. 108, 111, per Roche, Ch. J.

are not charged by federal law with the duty or function of policing the parties in the performance of collective bargaining agreements entered into pursuant to the Railway Labor Act . . . " *Hayes* pitched his entire case upon the doctrine of *Steele* and *Tunstall*. Nevertheless, this court denied the writ of certiorari.

Indeed, it would be an unusual ruling which would require Federal Courts to assume the duty of adjudicating all controversies arising out of contracts negotiated by collective bargaining solely because the bargaining was done under some federal law. Suffice it to say, no such ruling has yet been made.

This court has denied federal jurisdiction under §301 of the Labor Management Relations Act in the *Westinghouse* case.[13] It held, and properly so, that:

> "The employees have always been able to enforce their individual rights in the state courts . . ." [14]

Texas has given recognition of these rights of individual employees, even as against their own union.[15]

II.

Administrative Remedies Under the National Labor Relations Act Must Be Exhausted

Under the National Labor Relations Act, the Board has consistently recognized its duty to police the activities of certified unions to prevent discrimination because of color

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[13] Association of Westinghouse Emp. v. Westinghouse E. Co., No. 51, 1955, 75 S. Ct. 488.

[14] **Id.** 75 S. Ct. 488, 500.

[15] Lundine v. McKinney, 183 S.W. 2d 265 (Tex. Civ. App. 1944, no writ).

or race.[16] Such power is consistent with the duty cast upon the Board by the law creating it.

On the other hand, under the Railway Labor Act, there is no administrative remedy available.[17] Thus, the true distinction between cases arising under the two Acts becomes apparent. With the Railway Labor Board powerless to protect Negro employees, who were denied membership in the union having exclusive bargaining rights, this Court properly permitted *Steele* and *Tunstall* to invoke the Court's jurisdiction.

The Ninth Circuit, as late as August 26, 1955, upheld a Labor Board order finding both the company and the union guilty of unfair labor practices because of a discriminatory seniority provision in the contract.[18] The Board [19] had found the company and the union guilty of violating the Labor Management Relations Act. True, the issue was different from that raised here, but the result reached is in harmony with the jurisdiction previously asserted by the Board in *Larus, Hughes,* et al., supra. The remedy was the usual one of cease and desist and make whole for loss of earnings. This is a far cry from that of "economic suicide" as decertification was termed by *amicus curiae* in the Court of Appeals.[20]

Actually, "the particular means by which the effects of unfair labor practices are to be expunged are matters 'for

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[16] Carter Mfg. Co., 59 NLRB 804 (1944); Larus & Bro. Co., 62 NLRB 1075 (1945); Veneer Products, Inc., 81 NLRB 492 (1949); The Coleman Co., 101 NLRB 120 (1952) Hughes Tool Co., 104 NLRB 318 (1953).

[17] Tunstall, supra.

[18] NLRB v. I.B.T., etc. (CA-9, August 26, 1955), not yet reported; 36 LRRM 2832.

[19] Pacific Inter. Express, 107 NLRB 837, 844 (1954).

[20] Brief of Amicus Curiae.

the Board not the courts to determine.' " [21] Indeed, in reviewing orders of the Board, the courts must recognize the function "of the Labor Board as one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect." [22]

The jurisdiction sought here by petitioners without resorting to the Board for redress of alleged grievances "would indeed open a Pandora's Box and the resulting evils and inconveniences would perhaps lead to unsatisfactory conditions reminiscent of those existing prior to the Portal-to-Portal Act of 1947 . . ." [23]

Conclusion

The lower courts having ruled correctly upon the jurisdictional issue, the respondent Gulf respectfully prays that the petition be denied.

Respectfully submitted,

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[21] Virginia Electric & P. Co. v. NLRB, 319 U.S. 533, 539 (1942), quoting from I.A.M. v. NLRB, 311 U.S. 72, 82 (1940).

[22] Universal Camera Corp. v. NLRB, 340 U.S. 474, 488 (1950).

[23] Rock Drilling Co., etc. v. Mason & Hanger Co., 217 F. 2d 687, 692 (CA-2, 1954), cert. den. 349 U.S. 915 (1955).

Certificate of Service

Copies of the foregoing reply have been furnished to counsel of record for all parties.

Attorneys for Respondent

IN THE

Supreme Court of the United States

October Term 1951

No. 398

JOHN STEEL, LOUIS J. WARREN AND LOCAL UNION No. 254, OIL WORKERS INTERNATIONAL UNION, CIO,

Petitioners

VERSUS

OIL WORKERS INTERNATIONAL UNION, LOCAL No. 23, F. A. McDUFFIE, E. R. McADAMS AND GULF OIL CORPORATION,

Respondents

REPLY OF RESPONDENTS

Local No. 23, Oil Workers International Union, CIO, F. A. McDuffie, and E. R. McAdams, in Opposition to Petition for Writ of Certiorari

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Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, Ocean Lodge No. 7, et al., 323 U.S. 210, 65 S. Ct. 235, 89 L. Ed. 187 (1944) 4, 7, 8, 9, 11

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TEXTS

Stern and Gressman, Supreme Court Practice, Second Edition, Chap. XIV 16

IN THE

Supreme Court of the United States

October Term 1955

No. 390

JOHN SYRES, LOUIS J. WARRICK AND LOCAL UNION No. 254, OIL WORKERS INTERNATIONAL UNION, CIO,
Petitioners

VERSUS

OIL WORKERS INTERNATIONAL UNION, LOCAL No. 23, F. A. McDUFFIE, E. R. McADAMS AND GULF OIL CORPORATION,
Respondents

REPLY OF RESPONDENTS

Local No. 23, Oil Workers International Union, CIO, F. A. McDuffie, and E. R. McAdams, in Opposition to Petition for Writ of Certiorari

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This reply is submitted on behalf of Respondents, Local 23 of the Oil Workers International Union, CIO, and F. A. McDuffie and E. R. McAdams, two of the officers and members of Local 23. These are all the defendants below except Gulf Oil Corporation, the employer in this case, which will submit its own position.

The statute involved is the National Labor Relations Act, 29 U.S.C.A. 151, et seq.

Questions Presented

We do not agree that this case presents the questions stated in the petition.

I. As to the first question, our position is based upon two fundamental facts: (1) In essence, this is a suit by a certified bargaining agent against a jointly certified bargaining agent for breach of a private agreement between the two; and (2) federal jurisdiction is not invoked by this claim that "two line" seniority was negotiated in a single labor contract and that only "one line" seniority will satisfy the statute or the Constitution. This complaint is awry of an allegation of "discrimination" in the legal sense, there being no well pleaded facts to suggest that defendants caused or might cause the loss of a single job or seniority position actually held by a Negro, or that the contract fails to provide better and increasing job opportunities for Negroes, or that a systematic or perpetual restraint exists, or that defendants did less for plaintiffs than they could do on this occasion, but only that the defendants achieved less than perfection for the duration of the contract which they signed on April 17, 1954.

II. As to the second question, we understand that it was not at any point in the proceedings below decided adversely to Petitioners. As to this point these Respondents sided with Petitioners in the Court of Appeals contrary to the position urged by the Respondent Gulf.

Statement

The statement of the case, Petition p. 3, is correct as far as it goes, but it does not adequately describe the status of the parties or the other facts relevant to federal jurisdiction.

This suit was filed by a certified bargaining agent, Local 254, the Negro local, joined by two individuals, John Syres and Louis J. Warrick, acting as representatives under Rule 23(a) of "Members of Local 254 and/or employees of Gulf Oil Corporation" (R. 5).

These Respondents, the union defendants below, are Local 23, likewise a certified bargaining agent, and F. A. McDuffie and E. R. McAdams, who are members and officers of Local 23 (R. 1). F. A. McDuffie is also sued as a representative under Rule 23(a) of "all other persons similarly situated who are members of Local 23."

The relatioinship between the two local unions is that they are jointly certified to represent the same group of employees—namely: all the employees of the appropriate bargaining unit at the Port Arthur, Texas refinery of Gulf. The complaint alleges that plaintiff is a "component element of the exclusive bargaining agent" (R. 6). This allegation of joint certification is confirmed by the published decision of the National Labor Relations Board.[1]

Under this arrangement each local jointly and equally with the other is the owner of the statutory power, and the Negro local is as much the representative of the white employees as the white local is of the Negro employees.[2]

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[1] In the matter of Gulf Oil Corporation (Port Arthur Refinery) and Oil Workers International Union, Locals 23 and 254, Case No. 16-R-557, 58 NLRB 978. The amended certification of representatives, dated October 13, 1944, is reproduced in this brief as Exhibit A. It jointly certifies O.W.I.U. Locals 23 and 254 as the exclusive representative of all the employees in operating and maintenance at the Port Arthur refinery with the exception of certain specified classifications.

[2] **Wm. Cameron & Co., Inc.** (1952), 98 NLRB 969 at p. 973 (29 LRRM 1456):

At least from the standpoint of pure mechanics, this unique suit by a certified bargaining agent against its partner and against part of the individual employees whom it represents is a reversal of the alignment in *Steele*[3] and *Tunstall*[4] where the plaintiffs were individuals who invoked the implied statutory obligations owed to them by the certified bargaining agent.

Following the dismissal by the trial court, Local 254, although here a Petitioner, did not give notice of appeal,

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"The Teamsters and the Carpenters desire to go on the ballot as a single, joint representative. The Employer opposes this on the grounds that it is a subterfuge to defeat a finding of a unit on an over-all basis. No showing has been made that, if selected, the Teamsters and the Carpenters will not bargain on a joint basis for the whole unit. Board precedent has fully established the propriety of two or more labor organizations acting jointly as bargaining representative for a single group of employees. We see no reason to depart from such precedent in the present instance, and accordingly find that the Teamsters and the Carpenters may appear jointly on the ballot in the election directed hereinafter. If they should win, they will be certified jointly as the bargaining representative of the employees in the entire appropriate unit. The Employer may then insist that the Teamsters and the Carpenters do in fact bargain jointly for such employees as a single unit."

Pacific Maritime Association (Dec. 1954), 110 NLRB No. 254, at page 2 (35 LRRM 1299):

" * * * Board precedent has fully established the propriety of two or more labor organizations acting jointly as bargaining representative for a single group of employees. Wm. Cameron & Co., Inc., 98 NLRB 969, at 973 * * * "

[3] **Steele v. Louisville & N.R. Co., et al.**, 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173 (1944).

[4] **Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, Ocean Lodge No. 76, et al.**, 323 U.S. 210, 65 S. Ct. 235, 89 L. Ed. 187 (1944).

this notice being limited to the individual plaintiffs Syres and Warrick (R. 21). For this reason the opinion of the Court of Appeals designates only these two individuals as appellants.

As the Petition for Certiorari shows (p. 3), the basic complaint is that on April 17, 1954, defendants negotiated with Gulf a contract providing for "two line" seniority in lieu of "one line" seniority "contrary to an agreement previously reached by the two locals." More specifically, the allegation was that before January 5, 1954 collective bargaining contracts were negotiated by a Workmen's Committee composed of eight persons selected by Local 23 and four persons selected by Local 254 (R. 7). Between December 23, 1953 and January 5, 1954, a certain agreement was designed and consummated between these two locals. The agreement was that they would amalgamate "in some specific areas" and henceforth all Workmen's Committee nominations would be made jointly by the members of both locals sitting together (R. 7). This amalgamation agreement was entered into by Local 254 solely upon the assurance that the Workmen's Committee so jointly selected would in no manner discriminate against Local 254, its members or officers. Receiving such assurances, especially that a "one line" seniority would be maintained, Local 254 agreed to amalgamate. Thereafter, because of the numerical majority of the members in favor of Local 23, the jointly selected committee was all white (R. 7-8).

The all white committee, so jointly selected, signed a collective bargaining agreement on April 17, 1954 which contained the two lines of seniority, one for Negroes and one for white employees, contrary to the agreement previously reached by the two locals (Petition for Certiorari, p. 3; R. 8-9).[5] The complaint also alleged a conspiracy

[5] The court will understand that there is no claim that there is discrimination on the face of the contract. The allegation is that

between Local 23 and the Respondent, Gulf Oil Corporation, but no act of conspiracy is set out except the execution of the contract of April 17, 1954.

There is no allegation or intimation that the union defendants caused or might cause the loss of a single job or seniority position actually held by a Negro. There is no allegation that the contract fails to provide better or increasing job opportunities for the Negro or that any systematic or perpetual restraint exists or that union defendants did less for the Negro members than was possible. In short, the whole claim is that union defendants achieved less than perfection in the contract which they signed on April 17, 1954. The duration of the contract is not alleged.

The relief prayed for was for damages, for injunction against enforcement of the collective bargaining contract, and for declaratory judgment in favor of one line of seniority (R. 12-14).[6]

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the two lines of seniority were established in the contract with the knowledge on the part of defendants that "presently only Negro employees comprise the Labor Division" and that "defendants did know that all of plaintiffs and those whom they represent were employed and did work only in the labor division or labor department of defendants corporation. . . . " (R. 9). There is no allegation that anything in the contract now or in the past would or did prevent the employer from the original employment of Negroes in either line of seniority or any department. There is no allegation that the Union has ever had contractual right or influence to affect the employer's hiring from either race for any department.

[6] Also among the questions pleaded for declaratory judgment was whether the defendants could lawfully refuse to allow "the properly designated representatives of Local 254, a component of the unit certified, the right and privilege of negotiating . . . " the collective bargaining contract (R. 4-5). However, this feature of the pleading has been at all times disregarded by plaintiffs below and has not been noticed by either court below.

Reasons for Denying the Writ

A. There is no conflict between the decision below and the Steele or Tunstall decisions. The decision below is correct in view of the alignment of the parties and the nature of the case.

The case was not decided, nor was it defended, upon any ground which denies or limits the implied statutory obligation of the certified bargaining agent not to discriminate on grounds of race. It has been recognized that the cited decisions [7] apply with equal force to the National Labor Relations Act as they do to the National Railway Labor Act, 45 U.S.C. 152. On this point, the dissenting opinion arrives at the conclusion from which Respondents started in this case. In our brief to the Fifth Circuit, we said:

> "We give full recognition to the law declared in the *Steele* and *Tunstall* decisions, and related cases, that a certified bargaining agent under the Railway Labor Act must not utilize its statutory position as the exclusive bargaining agent to discriminate against Negro non-members. This court and the Fourth Circuit have applied the law of these cases against an array of legal defenses." (Citing *Brotherhood of Locomotive Firemen, etc., v. Mitchell,* 190 F. 2d 308 (C.A. 5, 1951); *Rolax v. Atlantic Coastline Ry. Co.,* 186 F. 2d 473 (C.A. 4, 1951).)

As the court below recognized:

> "The union appellees (No. 23) refrained from contending that the Taft-Hartley Act does not cover rights of this case under any circumstances, but con-

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[7] Footnotes 3 and 4, supra.

tented themselves with saying, in this particular case, the issue is between one element of the amalgamated union against the joint bargaining agent duly certified and that the dispute concerns merely the private matter of seniority, not covered by the Taft-Hartley Act, and hence does not arise under federal laws." (Opinion p. 4; R.).

The opinion of the Court of Appeals sustained the argument of Respondents that the substance of this case as disclosed by the pleadings is breach of contract. The position which we submitted below and urge here is that *Steele* and *Tunstall* do not purport to govern or enforce the terms and conditions of an agreement made between two jointly certified bargaining agents relative to their mutual business. Repeating verbatim our position below, we again urge:

"The force and effect of those decisions can hardly be misunderstood in the area which they cover, but it is important to bear in mind both the reason for those decisions and the actual holding which they made. *First:* because the Negro plaintiffs in those cases were not members of the defendant unions nor eligible for membership, the authority of the union to act for them was derived 'not from their action or consent but wholly from the demand of the Act', 323 U.S. p. 199. Further, since the minority members were deprived by the statute of their normal right to select their own representatives and to bargain for themselves, and even of their right of 'self-help', they would be left with no means of protecting their interests unless the Act be construed, as Congress must surely have meant, to require the selected organization to fairly represent *all* members of the craft or class. Otherwise, severe constitutional questions would follow. *Second:* each of those cases on their facts were situations in which the defendant unions had literally

set upon the Negro non-members with the intent and effect of depriving them of their existing jobs or demoting them from such existing jobs.

"The all-important distinction between those cases and the present case is that here the suit is by a certified bargaining agent and two of its members against another certified bargaining agent and its members. These plaintiffs are, therefore, not the victims of any union which derives its power solely from a federal statute and without their consent, but they are in fact the holders of the federal statutory power, and they allege that they suffered damage because the jointly certified Local 23 breached the agreement between the parties at the time the two locals amalgamated. Every reason which impelled the result in the *Tunstall* and *Steele* cases is, therefore, absent, and the jurisdiction here sought to be invoked will put the federal courts in the business of policing the private agreements between certified labor organizations."

And we further submit that this is so because the implied statutory obligation arises only in behalf of plaintiffs whose natural position is impaired by the statute in favor of the bargaining agent. Petitioners would reverse the obligation (and the reason behind it) by claiming it in behalf of plaintiffs who uniquely enjoy the highest legal position known to our labor relations laws as the joint owners of the federal statutory power. Their defendants are their statutory partner and some of the individual employees whom they represent.

Williams v. Yellow Cab[8] is pertinent to this case because it illustrates that the relative position of the parties in rela-

[8] 200 F. 2d 303 (CA 3, 1952) cert. den. 346 U.S. 840, 74 S. Ct. 52, 98 L. Ed. 361.

tion to the statute is of some weight on the issue of federal jurisdiction. In *Williams* the Third Circuit held that federal jurisdiction did not exist where plaintiffs were individual members and defendant was a non-certified union. In this case Petitioners ignore our specific facts and seek this writ by quarreling with *Williams*, but plaintiffs in that case were in a different and legally inferior position when compared to these petitioners. Those plaintiffs had no statutory power to negotiate, or to decline to negotiate, an amalgamation agreement and to include conditions with reference to lines of seniority as did these petitioners. To ignore this superior legal position is to treat these Petitioners as wards of the Court, an absurd step backward for the Negro race.

B. The factual allegations do not invoke federal jurisdiction because they are far short of a claim of discrimination contrary to implied statutory obligations or Constitutional requirements.

In addition to the status of the parties, there is a second and independent reason why the dismissal was correct. This second ground concerns not only the law but the justice and right of the case from the standpoint of federal jurisdiction. If Respondents are in error, a severe load of supervision will fall on the federal courts.

As the Petition for Certiorari (p. 3) clearly reflects, the fact upon which federal jurisdiction must rest is that on April 17, 1954 Respondents negotiated a collective bargaining contract which contained two lines of seniority. For executing this contract, the union and the employer, Gulf, are said to be "in conspiracy".

Unlike the discrimination problems presented in the grand jury and school cases, it must be recognized that a collective

bargaining contract is a hybrid document. One contracting party, the union, is under lawful duty not to discriminate. The other contracting party, the employer, is free of any such statutory or constitutional restraints. The employer is free to bargain for and insist upon its own views relative to seniority, assignment, competence, and training of the labor forces. In this case, Gulf did in fact argue its legal freedom in this matter as the Court of Appeals' opinion shows (pp. 3-4; R.). Therefore, the resulting contract may not always be perfect.

It is a fact of compelled judicial notice that, in the exercise of this freedom, employers in the South (and elsewhere) have widely applied their own motions with reference to the placement of Negroes and whites in their labor forces. It must be judicially noticed, too, that our Negro citizens have not in the past enjoyed equality of job opportunity, and this was true before the unions came.

Now then, we deduce from the doctrine announced in *Tunstall* and *Steele,* and we assume *arguendo,* that confronted with this situation a certified bargaining agent has the duty and obligation to advance the welfare of its Negro members with determined purpose to improve and equalize their job opportunities and to eliminate any inferiority in job opportunity. To accomplish this purpose, the union cannot start with anything different than what it inherits, and this will often be an inequitable arrangement in which the white employees occupy one group of better jobs while the Negro employees occupy another group of inferior jobs. Within both groups, the individual employees have used up the years of their lives building "seniority" in the jobs which they actually hold and for the jobs to which they aspire. It is utterly unrealistic to say that the duty of the bargain-

ing agent includes the obligation to rescramble at once the occupants of the jobs in such a way as to totally and instantly eliminate every vestigial condition related to race. Even if a union could convince its white members to take such a drastic step, the employer could not stand for it in the interest of efficiency of operation.

For such an existing condition, several possible solutions may come to mind, but one allowable solution, we respectfully submit, is for the union to deal with an inherited discrepancy between the races by removing an equitable number of jobs from the lines of progression within the white group and make them available to the bid of the Negro group. By so doing the union, although decreasing to that extent the job opportunities of the whites, is, nevertheless, making a compensatory correction of previous inequity and commencing the elimination of discrimination. The union is not thereby "segregating". The jobs are the same as before. But this is called "two line seniority" in this complaint, and this is what the lawsuit is about.

We need not argue, and we do not argue, that this system of correction is allowable as the ultimate goal of the union's program. We can assume that the ultimate goal must be the total elimination of reference to race in the selection of bidders for open jobs. We do say that it is an allowable temporary expedient to be used within the discretion of the bargaining agent provided good faith and sincerity of purpose are present.

We do not pause to argue the infinite complexities of seniority, the use to which it is put, and the units to which it is applied. *Ford Motor Co. v. Huffman*[9] and *Aeronautical*

[9] **Ford Motor Co. v. Huffman**, 345 U.S. 330, 73 S. Ct. 681, 97 L. Ed. 1048 (1952).

Industrial Dist. Lodge, 727 v. Campbell,[10] quoted extensively in the opinion below, leave us reassured that the Supreme Court has already given close analysis to the complexities of seniority and the broad discretion which must be vested in the bargaining agent within the framework of good faith. The only thought we can add is that "seniority" is nothing more than a system of ground rules by which a given job is made available to A instead of to B, and while the elimination of discrimination is practical and possible for any certified bargaining agent which is in good faith about it, still it is not so easy as to accept the dogmatic notion that on every occasion and on every day of history the arrangement must be "one line" and not "two lines".

In the above analysis, these Respondents have assumed the existence of the obligation of the certified bargaining agent to make these compensatory adjustments within its own ranks even to the temporary detriment of the white employee in favor of the eventual equality of all. We make this assumption without the benefit of precise judicial decision to this effect. There are those who would say that the concessions go too far. In due course the Supreme Court in a proper case must answer these questions authoritatively for the guidance of labor and management. In this case, however, we respectfully submit that the trial court was correct in the dismissal because this petition alleged nothing factual which would suggest discrimination except the matter of the two lines of seniority. Since there is nothing alleged which remotely resembles the predatory attack in *Tunstall* and *Steele*, and nothing which suggests a failure to provide better and increasing job opportunities or that

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[10] **Aeronautical Industrial Dist. Lodge 727 v. Campbell,** 337 U.S. 521, 69 S. Ct. 1287, 93 L. Ed. 1513 (1949).

a systematic or perpetual restraint exists, or that defendants did anything except that they failed to achieve perfection for the duration of the contract which they signed on April 17, 1954, the bald allegation of two line seniority alleges nothing factual which means discrimination in the legal sense. It is still good law that federal jurisdiction must affirmatively appear and cannot be inferred argumentatively from the affirmations in the pleadings. *McNutt, Governor of Indiana, et al., v. General Motors Acceptance Corp.*, 298 U.S. 178, p. 189, 56 S. Ct. 780, 785, 80 L. Ed. 1135 (1936). The dismissal below was therefore correct, especially in view of the fact that Petitioners have declined to amend at any point in the proceedings below and have preferred to stand substantially upon the naked facts set forth in their statement on page 3 of the Petition for Certiorari—namely, "the said contract was discriminatory in that it contained one line of seniority for Negro employees and one line of seniority for white employees."

From the standpoint of the exercise of certiorari jurisdiction, a Supreme Court pronouncement on the approach that a certified bargaining agent may or must take to eliminate differences in seniority would be most welcome to organized labor. However, we frankly feel that it is nearly impossible on these allegations to come to grips with sufficient actual facts in litigation to aid the Supreme Court in declaring a point at which federal jurisdiction arises to supervise the bargaining agent's exercise of discretion in matters of seniority or to control the terms negotiated with the employer. We feel that what must result in a discussion largely in vacuum—an experience that counsel has actually lived through in attempting to lay these allegations in the context of the established rules of law and the judicially known facts of life. It may be plausible at first blush to say

that two-line seniority per se gives rise to federal jurisdiction, but we submit that the contention has no merit and the judgment below was correct.

Finally, the potential questions of general interest which lurk in the background of this case are wholly obscured by the unique situation that seniority was made the subject of private agreement by a group of plaintiffs who had the statutory right and power to make the agreement.

For these limited reasons, Respondents respectfully suggest the denial of certiorari.

C. Status of the second question.

The question of exhaustion of administrative remedy before the National Labor Relations Board has not been decided adversely to petitioners.

In the Trial Court the defendant, Gulf, urged it as a ground of dismissal, but the Trial Court dismissed solely on the ground that the case "does not arise under the constitution, laws, or treaties of the United States within the purview and meaning of said Section 1331." (R. 19).

The majority opinion below did not discuss this point, but affirmed on other grounds. The dissenting opinion below declared that the point has no merit. (Opinion, pp. 17, 18).

These Respondents do not join the argument urged by Gulf. No section of the statute has been cited which is alleged to be involved under which the facts of this case might constitute an unfair labor practice. Our view on this subject is that the case is so well within the discretionary authority of the collective bargaining representative that there

is no ground for a substantial charge that the union, by exceeding its authority, committed an unfair labor practice. See especially Footnote 4 of the Opinion in *Ford Motor Co. v. Huffman*, supra.

D. **A question of mootness exists.**

We understand counsel is under obligation to call to the attention of the Supreme Court facts which may raise a question of mootness even though we are not of the view that the case is thereby rendered moot. STERN AND GRESSMAN, Supreme Court Practice, Second Edition, Chapter XIV.

Upon the certificate of counsel we advised the court that the complained of contract was of eighteen months duration and expires on October 17, 1955, upon the giving of the usual sixty days notice, which notice has been given.

While this fact may affect the prayer for injunction and for declaratory judgment, we do not see how the question of damages would be rendered moot.

Conclusion

The lower Courts have ruled correctly on the jurisdictional issue and these Respondents respectfully pray that the petition be denied.

Respectfully submitted,

CHRIS DIXIE
505 Scanlan Building
Houston, Texas
Attorney for Respondents

Certificate of Service

Copies of the foregoing reply have been furnished to all counsel of record for all parties.

EXHIBIT "A"

AMENDED CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9(c) of the National Labor Relations Act, and pursuant to Article III, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended,

IT IS HEREBY CERTIFIED that Oil Workers International Union, Locals 23 and 254, has been designated and selected by a majority of all operating and maintenance employees of Gulf Oil Corporation (Port Arthur Refinery), Port Arthur, Texas, excluding employees in units previously established (Said units being listed as Appendix "A" attached hereto), commissioned watchmen, head watchmen, graduate engineers, chemists performing analytical work, monthly paid employees performing testing work who have been in the employ of the company for less than a year, employees engaged in the bricklaying and masonry trades, including apprentices, executives, car shop subforemen, dock assistant foremen, garage subforemen, labor subforemen Nos. 1 and 2, carpenter subforemen, pipefitters subforemen, laboratory tester foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9(a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Washington, D. C., this 13 day of October, 1944.

Harry A. Millis
Chairman

Gerard D. Reilly
Member

John M. Houston
Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

NOV 2 3 1955
HAROLD B. WILLEY, C

No. 390

IN THE

Supreme Court of the United States

October Term, 1955

JOHN SYRES, LOUIS J. WARRICK AND LOCAL 254, OIL WORKERS INTERNATIONAL UNION, C I. O.,
Petitioners

v.

OIL WORKERS INTERNATIONAL UNION, LOCAL #23, F. A. McDUFFIE, CHAIRMAN, GULF MAIN PLANT GROUP AND GULF OIL CORPORATION, E. R. McADAMS, CHAIRMAN, GULF WORKMEN'S COMMITTEE,
Respondents

MOTION FOR REHEARING AND FOR ORAL ARGUMENT BY RESPONDENT GULF OIL CORPORATION

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We must construe the Court's per curium opinion granting certiorari and reversing the decision of the Court of Appeals, without permitting oral argument, as a decision that the law was so clear that it would be a waste of the Court's time to hear oral argument.

We respectfully point out to the Court that the effect of its decision is to hold that the *employer* is under a duty to represent its *employees* in collective bargaining. The National Labor Relations Act explicitly prohibits such employer interference in the collective bargaining relationship.[1] This Court has held [2] that such constitutes an unfair labor practice, jurisdiction of which is conferred on the Board.

Additionally, by a "somewhat cryptic decision" of three lines [3] this Court has clothed 306 local tribunals of general jurisdiction "with the special jurisdiction now vested in a unified agency with nationwide jurisdiction over labor controversies." [4] The effect is to assign the duty of policing

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[1] 29 U.S.C. 151, et seq.

[2] Medo Photo Supply Corp. v. NLRB (1943), 321 U.S. 678, 685.

[3] "A union representing employees covered by the NLRA has a duty to represent them without racial discrimination, even if all the employees have voluntarily joined the union. This is the apparent effect of a somewhat cryptic decision by the U.S. Supreme Court in Syres v. Oil Workers International Union, reported at Par. 69550."

* * *

With respect to the Steele, Tunstall, and Howard cases, cited by the Court the Reporter further comments:

"Those decisions all held that a union representing railroad employees under the Railway Labor Act has a duty to avoid racial discrimination. **Although a greater degree of clarity would be desirable, this summary ruling of the Supreme Court seems to indicate that a union representing employees covered by the NLRA has the same duty regardless of the extent of the union membership. The Supreme Court's earlier refusal to review the Williams case, however, remains unexplained.**" (CCH Labor Law Reports, No. 381, dated 11/17/55) (Emphasis supplied.)

[4] Quoted from **Amazon Cotton Mill Co. v. Textile Workers Union**, (CA-4, 1948), 167 F. 2d 183, 190. There are now 306 Federal District Judges (Sen. Rep. No. 25, 84th Congress).

labor contracts to the District Court when Congress has placed the duty upon the Labor Board.

"It is not difficult to foresee the confusion" [5] that will necessarily result from applying the rationale of cases decided under the Railway Labor Act [6] such as *Steele, Tunstall* and *Howard* [7] cited by the Court. No prior decision of this Court has conferred such power upon the trial branch of the Federal Judiciary under Labor Management Relations Act.[8] This Court indeed, cites no case arising thereunder in support of the decision. Thus, without argument of the question, without the citation of any authority under the Act involved, this Court has opened a breach in the machinery set up for preserving the industrial peace.

The Board has asserted its power to correct abuse of power by certified bargaining agents.[9] Other circuits have denied to the trial judges such jurisdiction (e.g. *Williams v. Yellow Cab Co.*, CA-3, 1952, 200 F. 2d 302). The possibility of conflict is clear; the probability is certain. Yet, this Court has in no way delineated the scope of such power. Does this new and undefined grant extend to all unfair labor practices? If Federal Courts can police such contracts, may they not also enjoin any other unfair labor practice? The decision, as written, either (a) denies the Labor Board of power over bargaining agreements resting on racial discrimination, or (b) makes available a choice of tribunal to redress the wrong.

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[5] **Amazon,** supra.

[6] 45 U.S.C. 151, et seq.

[7] 323 U.S. 192; 323 U.S. 210; and 343 U.S. 768, respectively.

[8] 29 U.S.C. 151, et seq.

[9] Cf. **Carter Manufecturing Co.,** 59 NLRB 804 and cases cited below at 223 F. 2d 739.

The evil of permitting "shopping for a forum" between each Federal Court and the Board is crystal clear. No such result was anticipated by the Congress.[10] The potential injury to the whole machinery of collective bargaining is aggravated by the failure of this Court to speak clearly upon the subject.

We submit that it would be appropriate, before taking the momentous step of opening the Federal Courts to such type of case, to invite the Board to state its position to the Court. If the Board is prepared to protect the rights of workmen from discriminatory practices, the Federal Courts will be relieved of this unpleasant, arduous, and difficult task. The machinery designed by the Congress, staffed by experts in the field, can be used to apply the law uniformly to all.

It is time enough to confer this unusual jurisdiction upon Federal Courts when no other adequate forum is available. There was no agency to whom the school segregation problem could be entrusted. There was none under the Railway Labor Act. Federal Courts, *only*, could protect the Constitutional rights of citizens. Here, fortunately, there is a National Board equipped, trained, and available to enforce such rights. It has claimed the power, and such has never been denied.

Conclusion

The impact of this decision is such that the Respondents respectfully pray that the Court grant this Motion for Rehearing, and if upon rehearing the Court is of the opinion that the order granting the writ of certiorari should

[10] See legislative references in **Amazon**, supra, 200 F. 2d 183, 188.

stand, then let the case be restored to the docket, the National Labor Relations Board be requested to appear and state its position, that the parties be permitted oral argument, and in the alternative that the order granting writ of certiorari, as to the Respondent Gulf, be set aside and such application for certiorari be denied as to the Respondent Gulf, and for the entry of such other and further orders as may be requisite and proper in the premises.

Respectfully submitted,

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Of Counsel

Certificate of Service

I certify that the foregoing Motion for Rehearing is filed in good faith and not for the purpose of delay.

A copy of the foregoing Motion has been mailed to counsel of record of all parties.

Attorney for Respondent Gulf Oil Corporation

No. 390. SYRES ET AL. *v.* OIL WORKERS INTERNATIONAL UNION, LOCAL NO. 23, ET AL. On petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit. *Per Curiam:* The petition for writ of certiorari is granted. The judgment of the Court of Appeals is reversed and the case is remanded to the District Court for further proceedings. *Steele* v. *L. & N. R. Co.*, 323 U. S. 192; *Tunstall* v. *Brotherhood*, 323 U. S. 210; *Railroad Trainmen* v. *Howard*, 343 U. S. 768. *Roberson L. King* for petitioners. *Chris Dixie* for the Oil Workers International Union, Local 23, et al., and *Quentin Keith*, *David Proctor* and *Archie D. Gray* for the Gulf Oil Corporation, respondents. Reported below: 223 F. 2d 739.